

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THE CHARTER OAK FIRE  
INSURANCE COMPANY, et al.,

Plaintiffs,

v.

CONWAY CONSTRUCTION  
COMPANY, et al.,

Defendants.

CASE NO. C14-5646 BHS

ORDER DENYING  
DEFENDANT'S MOTION FOR  
ATTORNEY FEES AND COSTS

This matter comes before the Court on Defendant Multnomah County's ("County") motion for attorney fees and costs (Dkt. 25). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On August 18, 2014, Plaintiffs Travelers Property Casualty Company of America and the Charter Oak Fire Insurance Company (collectively "Travelers") filed a complaint

1 for declaratory judgment against Defendants Conway Construction Company, the  
2 County, and Starr Surplus Lines Insurance Company. Dkt. 1.

3 On September 30, 2014, the county filed a motion to dismiss, or in the alternative,  
4 transfer venue. Dkt. 13. On October 17, 2014, Travelers voluntarily dismissed the  
5 County. Dkt. 19. On On October 31, 2014, the County filed the instant motion for an  
6 award of fees and costs. Dkt. 25. On November 21, 2014, Travelers responded. Dkt. 27.  
7 On November 25, 2014, the County replied. Dkt. 30.

## 8 II. DISCUSSION

9 In this case, the County “requests that the Court award it its attorneys fees and  
10 costs pursuant to RCW 4.28.185(5).” Dkt. 30 at 1. Travelers counters that (1) because of  
11 the voluntary dismissal, the Court should treat the matter as though no action was ever  
12 filed and (2) the County’s reliance on the long-arm statute is “without merit.” Dkt. 27 at  
13 6–10. First, the Court agrees with Travelers that no fees should be awarded under Fed. R.  
14 Civ. P. 41. The federal statute, however, does not bar consideration of an award under  
15 Washington’s long-arm statute. Each statute authorizes the Court to consider fees under  
16 certain circumstances and Travelers has failed to show that the federal statute precludes  
17 fees awarded pursuant to the state statute. In fact, under state law, a voluntary dismissal  
18 does not bar an award under the long-arm statute. *Andersen v. Gold Seal Vineyards, Inc.*,  
19 81 Wn.2d 863, 868 (1973). Therefore, Travelers’ argument is without merit.

20 With regard to an award of fees pursuant to the long-arm statute, the statute  
21 provides as follows:  
22

1 In the event the defendant is personally served outside the state on  
2 causes of action enumerated in this section, and prevails in the action, there  
3 may be taxed and allowed to the defendant as part of the costs of defending  
4 the action a reasonable amount to be fixed by the court as attorneys' fees.

5 RCW 4.28.185(5). The Court is guided by two concerns, which are as follows:

6 First, a prevailing defendant should not recover more than an amount  
7 necessary to compensate him for the added litigative burdens resulting from  
8 the plaintiff's use of the long-arm statute. Second, where the defendant  
9 prevails by obtaining a ruling that jurisdiction under the long-arm statute  
10 does not properly lie, his award should not exceed the amount in attorney  
11 fees he would have incurred had he presented his jurisdictional defense as  
12 soon as the grounds for the defense became available to him.

13 *Scott Fetzer Co., Kirby Co. Div. v. Weeks*, 114 Wn.2d 109, (1990). In light of these  
14 concerns, the Court finds that the County has failed to show that the requested fees are an  
15 "added litigative burden" resulting from filing in this forum. The County's billing  
16 records indicate that the jurisdictional defense became available at least as early as  
17 September 9, 2014. Dkt. 26-1 at 1. Despite numerous communications with Travelers'  
18 counsel, the record does not reflect any attempt to resolve the jurisdictional issue without  
19 filing a motion and the accompanying fee petition. While the Court cannot condone  
20 hailing out of state defendants into Washington courts and then voluntarily dismissing  
21 them, the Court also will not condone excessive fees without any attempt to minimize or  
22 avoid accruing such fees. Therefore, in its broad discretion, the Court declines to award  
fees under the long-arm statute and denies the County's motion. With regard to costs,  
they are usually addressed in a separate petition to the Clerk.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that the County's motion for attorney fees and  
3 costs (Dkt. 25) is **DENIED**.

4 Dated this 30th day of December, 2014.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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